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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,164	01/20/2004	Richard L. Weaver	433-11US	6642
23716	7590	06/01/2006	EXAMINER	
ANTHONY ASQUITH 28-461 COLUMBIA STREET WEST WATERLOO, ON N2T 2P5 CANADA			ALIMENTI, SUSAN C	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/759,164	Applicant(s) WEAVER, RICHARD L.	
	Examiner Susan C. Alimenti	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 7, 9 and 17-21 is/are rejected.
- 7) ☒ Claim(s) 8 and 10-16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The indicated allowability of claim 17 is withdrawn in view of the amendment on 24 January 2006 changing “bias the door towards the *open* position,” (emphasis added) to “bias the door to the *closed* position,” (emphasis added). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-7, 9, and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giordano et al. (US 6,851,389), in view of Sheaffer et al. (US 5,349,923).

Regarding claim 1, Giordano et al. (Giordano) discloses the claimed invention except the trays that fit inside the cage are open at the top, instead of being completely enclosed and having a front door. Giordano's poultry transport comprises a cage 2 suitable for housing live poultry in transport, having a frame work comprising metal uprights 6, and members 6, 7, 8, fixed together to form an open, substantially rectangular framework.

Regarding claims 1, 4, 18 and 19, the individual cage 2 is a sturdy, stand alone, self-contained structure that is physically capable of being lifted, via forklift, on and off a transport

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truck as a unit (Giordano, col.3, lns.25-28). The framework is so arranged to define and receive poultry receiving trays 4.

Regarding claims 1 and 6, each tray has a single molded plastic unit, which defines a bottom and two side panels, and front and back lattice walls allowing for proper ventilation (Giordano, col.3, lns.10-14). Regarding claims 1 and claim 3, the trays may either have no perforation or optionally comprise small holes or elongated slits in the bottom thereof (Giordano, col.3, lns.19-24).

The trays 4 are open at the top, which requires the user to maintain great care in loading and unloading the poultry therein and additional effort in pulling the trays 4 out of their slot. Giordano teaches in Figures 1-3 how the poultry is to be loaded, i.e. from bottom to top, however, with the trays being open at the top this allows for the birds to fly up or extend an appendage above the top edge of the tray as the above tray is slid out to load more birds. Having the entire roof area of the tray 4 provides difficulty in closing adjacent trays, threatens injury to the birds, and in general makes it difficult for the user to handle the birds. Sheaffer discloses a similar structure for housing and transporting animals, however, Sheaffer teaches enclosing each compartment and providing a pivoting front door 230 (Sheaffer, Figure 15) allowing access to the interior. Sheaffer explains that this door 230 provides access to the interior of the housing (plenum 228) without removing the housing from its space in the frame (Sheaffer, col.10, ll.56-59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Giordano's transport device by making each tray completely enclosed and providing a front door for access to the interior, in order to provide the user easy access to the interior and more control over the poultry loaded and unloaded therein.

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Regarding claims 7 and 9, members 7, 8, and 9 cooperate to form a vertical fence panel that holds the uprights 6 in place and prevents the trays 4 from falling inwards or outwards, and is further considered to be a type of lattice form.

Regarding claims 17, 20, and 21, Sheaffer's door is pivotally mounted and biased by spring hinge 232 in the closed position, and remains closed unless a force is applied against it, (Sheaffer, col.10, ll.62 to col.11, ll.4) such as the weight of the animals contained therein if the container were tilted.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Giordano, in view of Sheaffer, as applied to claim 1 above, and further in view of Olson et al (US 2,212,549).

Giordano, as modified, discloses the claimed invention except the floor panel is not positively disclosed as being domed. Olson et al. discloses a poultry house having a solid paneled floor 16, that has a slight angle or dome providing for any objects on the floor to congregate to the edges of the cage. It would have been obvious to one having ordinary skill in the art at the time the invention was made to change the shape of Giordano's floor to encourage any objects on the floor to fall to the side of the cage, since it has been held that "there is no invention in merely changing the shape or form of an article without changing its function, except in a design patent." *Eskimo Pie Corp. V. Levous et al.*, 3 USPQ 23.

Allowable Subject Matter

5. Claims 8, 10 and 11-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments with respect to claims 1-4, 6, 7, 9, 18, and 19 have been considered but are moot in view of the new ground of rejection in view of Sheaffer.

In response to applicant's argument that because the "trays" are now recited in the claims as "tray chambers" the rejection over Giordano has been overcome, the examiner respectfully disagrees. The term "tray chambers" is a broad term and a tray is considered to encompass the broad term of a tray chamber since the trays 4 in Giordano's device create a chamber therein. In short Giordano's trays, clearly read on the limitation "tray chamber."

In response the argument that *Eskimo Pie* does not apply to the teaching of the Olsen patent, the examiner respectfully disagrees. The teaching, properly read, is that changing the shape of an object is obvious where the function of that object in the base reference (i.e. Giordano) has not changed its function. In this case the floor in Giordano, like that in Olsen will still perform its main function of supporting live poultry. This has *not* changed, thus the teaching of *Eskimo Pie* in fact applies here.

In conclusion, for these and the reasons set forth above the examiner maintains the rejection of claims 1-4, 6, 7, 9, 18, and 19.

Conclusion

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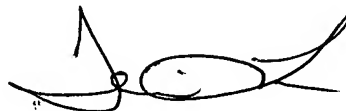
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is 571-272-6897.

The examiner can normally be reached on Monday-Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Susan C. Alimenti

A handwritten signature in black ink, appearing to read 'TERI PHAM LUU', with a stylized flourish at the end.

TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER